IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTIION

Writ Petition No. 9405 of 2005

Shri Santosh Vithal Nimse ..Petitioner

vs.

1. The President
Apang Seva Sanstha and others ..Respondents

Shri Mandar Limaye for petitioner.
Shri P.K.Hushing for respondent nos.1 and 2.
Shri R.M.Patne, A.G.P. for respondent no.3.

CORAM: S.C.DHARMADHIKARI J.
20th NOVEMBER, 2007

P.C.

1. Rule. Heard learned Counsel appearing for both sides by consent.

2. The grievance of Shri Limaye in support of this petition is that after holding that termination of the present petitioner is illegal and without any enquiry the Director has refused to grant any relief on the ground that he does not have jurisdiction to decide the appeal preferred by the petitioner. The conclusion drawn is that during the relevant time the school for Deaf and Dumb in question was not aided and not recognised and that is how the subject Director will have no jurisdiction.

3. Shri Limaye relies upon a judgment of this Court in Writ Petition No.743 of 2006 in the matter of Moreshwar Shantaram Bangar Vs.The President Apang Seva Sanstha and others rendered on 17th January, 2007. He states that this Court has held that the Director was in error in dismissing the appeal. The Director had necessary jurisdiction and that is how the Appellate Authority was directed to be approached by the employees working in subject school for deaf and dumb.

4. Shri Hushing, appearing for the Management on the other hand invites my attention to the affidavit in reply filed in this petition and submits that the petitioner was working as a clerk and that is how the subject Director would have no jurisdiction. The decision of this Court is rendered in the case of a teacher. In such circumstances, the impugned order does not suffer from any infirmity and deserves to be quashed and set aside.

5. Having perused the petition and the impugned order with the assistance of Shri Limaye and Shri Hushing so also the decision of the learned

single Judge of this Court, to my mind, after the director holds that the termination is without any enquiry, he could not have refused to interfere on the ground that the school in question did not get any aid till 11.10.2002 or that it was not recognised till 11th March, 1999. Both the aspects have been considered by the learned single Judge and it appears that after the decision of this Court, the Divisional Social Welfare Officer would have to reexamine the matter. The decision has been rendered by this Court after the impugned order and it would be in the fitness of things if the order of the Divisional Social Welfare Officer is quashed and set aside and the appeal of the petitioner is restored to his file for being decided afresh on merits and in accordance with law.

6. Needless to state that all contentions of both sides are expressly kept open and no opinion is expressed with regard to the same. However, the Divisional Social Welfare Officer shall decide the appeal afresh and uninfluenced by his earlier order and the conclusions therein. The parties to appear before the Divisional Social Welfare Officer on 10th December, 2007 and he

shall thereafter endeavour and dispose of the appeal within two months from the date of appearance.

7. Rule made absolute accordingly. No order as to costs.

(S.C.DHARMADHIKARI J.)